Whiteside & Associates

# Memo

To: **Montana Wheat & Barley Committee**

From: Terry Whiteside

Date: December 8, 2005

**Re: Transportation Report**

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## STB EX PARTE NO. 658 -THE 25TH ANNIVERSARY OF THE STAGGERS RAIL ACT OF 1980: A REVIEW AND LOOK AHEAD

The Surface Transportation Board held a public hearing marking the 25th anniversary of the Staggers Act on October 19, 2005.

The hearing provided a forum for the expression of views on the impact, effectiveness, and the future of the Staggers Act. Interested persons and parties, including large and small railroad customers, large and small railroad companies, representatives of local communities, and state and federal governmental officials, were invited to participate. The hearing is not intended to offer a forum for discussion of pending cases, but rather an opportunity for participants to address broader issues regarding the Staggers Act generally.

These following excerpted comments show the depth and commonality of the 'railroad problems' that exist in America today. These captive rail customers had the courage to stand up and speak out about the problems that the ICC/STB has done or has not done that has exacerbated the railroad service and rate problems that exist in America today.

### Alliance for Rail Competition

"In ARC's view, increased rail-to-rail competition was called for by Congress in the Staggers Act. However, implementation of the relevant provisions by the ICC and STB has resulted in less competition due to Class I mergers and regulatory approval of paper barriers neutralizing the ability of smaller railroads to compete with the Class I railroads.

The intent of Congress in the Staggers Act to deregulate in favor of competitive solutions has, since 1980, been applied to many other industries, including trucking, natural gas, telecommunications, ocean shipping, and electric power generation and sales. However, competition among railroads has not been promoted, or even preserved.

In the area of rail service, neither the ICC nor the STB has been a reliable or effective defender of minimal standards of performance by railroads.


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Twenty-five years after enactment of the Staggers Act, too many shippers paying high rail rates (i.e., rates well above the threshold of regulatory jurisdiction) have no remedy whatsoever. Remedies are available only for a minority of captive rail shippers, and even these remedies are limited.

In ICC and STB merger decisions, as in too many decisions addressing other regulatory issues, the concerns of captive shippers have been given short shrift."

## MONTANA WHEAT & BARLEY COMMITTEE, COLORADO WHEAT ADMINISTRATIVE COMMITTEE, IDAHO BARLEY COMMISSION, IDAHO WHEAT COMMISSION, NEBRASKA WHEAT BOARD, OKLAHOMA WHEAT COMMISSION, SOUTH DAKOTA WHEAT COMMISSION, TEXAS WHEAT PRODUCERS BOARD, WASHINGTON WHEAT COMMISSION & THE NATIONAL ASSOCIATION OF WHEAT GROWERS

"The wheat & barley producers are experiencing generally poor service, high rates and business decorum from the nation's railroads that shifts from indifference to superciliousness.

Indeed, increased rail to rail competition was called for by Congress in the Staggers Rail Act. In Title 49, Subtitle IV, Part A, Chapter 101: Section 10101.-Rail transportation policy the word 'competition' is utilized in four of the fifteen parts.

1. to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail
2. to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense
3. to foster sound economic conditions in transportation and to ensure effective competition and coordination between rail carriers and other modes
4. to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital

The trumping of the captive shipper protections by ever-present financial concerns of the ICC/STB has resulted in far less competition.

If we just review the results of the ICC/STB merger policy for a moment. Look at the history of the past several rail mergers. They have not significantly improved service. They have not increased or even maintain existing competition levels in the market place. They have not resulted in lower rates. They have not resulted in increased efficiency. They have resulted in service disruptions, closed gateways, increased transportation costs for rail customers. The costs associated with service disruptions go far beyond the loss of revenue to the rail customer."

## Granite Rock

"Recently service quality level in our area has plummeted as the railroad has sold a main rail yard in San Jose and re-arranged equipment & crews. Although a new service plan developed by the railroad has been put into place, it has been poorly executed so that significant delivery problems regularly occur. It is disturbing to heat from a Class I railroads senior management, "don't expect service levels to improve. As a matter of fact it will probably get worse.""

## Marshal Durbin Companies, Odom Industries, Inc. and Wayne County Economic Development District

"While the Staggers Act may have been a success in freeing the nation's major railroads to become more financially stable and operate like regular businesses, the Waynesboro Line Shippers' experience over the past

six years has revealed that the Board's implementation of the Act has created certain rules and policies that are not necessarily in the public interest.
The Board should more closely scrutinize the financial viability and operational capability of potential short line purchasers of branch lines from Class I railroads at the time of the sale by requiring the purchaser to demonstrate in its initial filing that it has sufficient resources to not only pick up where the Class I railroad left off, but to improve the status quo.

The Board should revisit its routine acceptance of "paper" and "steel" barriersin branch line transactions."

## National Rural Electric Cooperative Association

"Twenty-five years after the Staggers Act, deregulation is clearly not working for "captive" rail customers in many vital industries, as evidenced by the experience of consumer-owned electric cooperatives. Today, cooperatives that are "captive" under current practices and decisions are subject to the unrestrained monopoly power of the rail carrier upon whom they are dependant."

## U S Department of Agriculture

"Despite the overall success of the Stagger's Act, agricultural shippers have concerns regarding decreased rail-to-rail competition, the declining rail share of grain transportation, rail capacity constraints, the allocation of rail capacity, and rail rates.

In many agricultural production regions of the nation, truck and barge transportation provide adequate competition to constrain rail prices. However, barge transportation is not available to those agricultural producers located in the western portion of the Plains States, and truck transportation is not cost-effective due to the long distances to market. Thus, for agricultural producers located in those regions, competition-including rail-to-rail competition – must be preserved and promoted for effective competition.

Agricultural producers are concerned about the declining railroad share of the grain transportation market. In 1980, railroads hauled nearly 50 percent of grain to market. By 2000, the railroad share of grain hauled to market was down to only 32 percent. Most of the loss in market share went to trucks.

Rail capacity for agricultural products has been extremely tight during the last three years, for a number of reasons, both agricultural and non-agricultural. Non-agricultural factors include increased demand for most commodities due to economic expansion, the expansion of international trade, increased demand for coal due to high natural gas prices, high fuel prices, and new hours of service (trucking) regulations increasing rail intermodal demand.

Agricultural producers need enough rail capacity to assure adequate rail service during moderate surges in rail transportation demand.

USDA believes that all agricultural shippers, even the smallest , should have reasonable access to rail capacity.

The ability of agricultural shippers to cost-effectively appeal excessive rail rates os particularly important for agricultural producers because of the characteristics of the market in which they operate. Only coal shippers have been able to cost-effectively use the Stand-Alone Cost rate appeals procedures.

Tariff rates on approximately 30 percent of farm product shipments exceed the jurisdictional threshold which is a revenue-to-variable cost (R/VS/) ratio of 180 percent. In regions of the country that are highly dependant upon rail service, many agricultural shippers consider their rail rates to be excessive because the R/VC ratio is much higher-sometimes exceeding 300 percent- than the 180 percent jurisdiction threshold."

## National Grain and Feed Association

"There are growing signs of great concern to the agricultural community that changes brought about by the Staggers Act may bode far better for railroads than agricultural shippers.

Agricultural shippers continue to face difficulty in obtaining consistent or predictable rail service, almost as if railroads, having transferred the burden of car ownership costs to tank car and covered hopper car customers, can afford to make shipper car assets less productive through poor service in order to favor service provided in intermodal equipment. We face the anomalous situation where those rail shippers who pay more for rail service receive inferior service."

## Consumers united for Rail Equity (C.U.R.E)

"First, we encourage you to adopt a more realistic methodology for measuring the financial condition of the nation's major railroads.

Second, we encourage you to adopt pro-competitive polices with respect to reciprocal switching agreements and access to terminal areas ;"paper barriers" in any future transfer or lease of track from a major rail carrier to a short line or regional carrier and those paper barriers that exist today; and the lack of rates across "bottleneck" facilities that prevents captive rail customers from gaining access to competitive rail service for that portion of their rail movement where rail competition exists.

Finally, we encourage you to revisit the entire rate reasonableness process that has evolved over the first twenty-five years of railroad deregulation."

## North Dakota Grain Dealers Association

"The impact of Staggers on agriculture varies widely. Competition instead of regulation was to govern. Unfortunately effective transportation competition and alternatives are not available for this state nor significant areas of the Great Plains. Actions by the ICC and the STB to substitute for competition have been insufficient."

## The Private Car Owner Alliance

"While Staggers has been largely successful in many areas, it did not create an unlimited mandate for self-regulation by the Class I railroads at the expense of other industry participants, who's continued contributions will certainly be needed to insure the future success of the industry."

## Cemex

"As a result of the railroads' increasing market dominance, rail carriers have shifted costs to customers as a means of decreasing costs and increased accessorial charges to increase revenue. In particular, railroads have dramatically curtailed investment in system railcars for bulk commodities of low value to weight ("LVW") ratio, such construction materials, etc.

Railroads have further limited shippers' transportation alternatives by opposing increased allowable truck gross weights.

The creation of so many captive shippers through rail mergers was neither intended nor foreseen with the passage of the Staggers Act.

A particularly glaring failure under Staggers is the unchecked imposition of (non-negotiable) fuel surcharges and accessorial costs."


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